

1 consider a lot of factors that we have presented here, without
2 doing anything improper, and decide the case on a motion to
3 dismiss.

4 Getting back to my argument, if I might, the first
5 strand, as I was saying, is the — is the [indiscernible]
6 strand —

7 THE COURT: Could I just raise a question in terms of
8 time? Everyone assured me at the outset that they would divide
9 up the time and be done by — in the morning.

10 MR. FEINBERG: Yes, Your Honor. I was planning on
11 bring brief, but I'll try to be briefer. I've actually made
12 most of the points I want to make, Your Honor, so let me
13 quickly go through the three strands of our argument, and then
14 I'll — if the Court has any further questions, I'll be happy
15 to try to answer them, and otherwise I will sit down.

16 As to the res judicata, collateral estoppel effect
17 issue, certain of these plaintiffs litigated fully in the
18 bankruptcy court, as — particularly Base Metal Trading S.A.
19 and Miko [sic]. They participated — Base Metal Trading S.A.
20 participated at every stage of the process. It was Base Metal
21 Trading S.A. that took the appeals to the West Siberian Circuit
22 Court.

23 Their claims have been rejected in the Russian
24 courts. Again, the plaintiffs' allegations of corruption,
25 which are largely centered on Governor Tuleyev and the

1 | influence he allegedly has, has nothing to do with the West
2 | Siberian Circuit Court, and no reason to believe that those
3 | decisions were corrupted, and therefore the Court should, as a
4 | matter of comity, hold that they cannot re-litigate these
5 | issues in this court.

6 | As to the availability of remedies in Russia,
7 | plaintiffs failed at every turn to pursue remedies that they —
8 | that they had and that were available to them, and, as I said,
9 | to some extent are still available to them. The plaintiffs did
10 | not bring, for example, a separate proceeding in the bankruptcy
11 | court to challenge the repudiation of their contracts by the
12 | [indiscernible] that they could have done.

13 | They could have appealed after the constitutional
14 | court ruling of March 2001. They could have appealed a lot of
15 | the interlocutory rulings of the bankruptcy court that had
16 | prior — previous to that not been appealable, but they failed
17 | to do that.

18 | And as I said, they even now have the right to
19 | petition the Supreme Arbitrage Court to [indiscernible] and it
20 | failed to pursue that remedy.

21 | In addition, there are also the pending arbitrations
22 | [indiscernible] the Court has already mentioned is clearly
23 | aware of. And I should add only that although the Zurich
24 | arbitration has now been dismissed because of the invalidity of
25 | this consolidated arbitration agreement, and the Stockholm

1 court — excuse me, Stockholm arbitrators also found that
2 agreement to be valid.

3 Number one, the Stockholm arbitration —

4 THE COURT: Invalid. The agreement was invalid.

5 MR. FEINBERG: Invalid. The Stockholm arbitration
6 continues as to the plaintiffs' claims under the four contracts
7 which actually had a Stockholm venue for arbitration in it.
8 Every one of Base Metal Trading's contracts has a arbitration
9 clause in it, and the plaintiffs have a remedy in the
10 arbitration forums that are provided in those contracts, which
11 was not at all affected by the decision of the arbitrator in
12 Zurich.

13 In fact, every one of the plaintiffs' contracts has
14 an arbitration clause and an available remedy in that forum if
15 the plaintiffs only wanted to pursue it.

16 And finally, my argument as to the inappropriateness
17 of the Court deciding this — I guess I've made my argument,
18 Your Honor, that —

19 THE COURT: When you say every one of the plaintiffs'
20 contracts, you're talking about on the aluminum side.

21 MR. FEINBERG: I am, Your Honor. I'm sorry. I'm
22 addressing only the aluminum side. Unless the Court has some
23 further questions, I'll rest on that.

24 THE COURT: Thank you.

25 MR. VENAGLIA: Good morning, Your Honor. Peter

1 Venaglia from the law firm of Dornbush Mensch Mandelstam &
2 Shaeffer for the GOK defendants. That would be New Start,
3 Unidale, Investland, and Venitom.

4 Your Honor, the check is in the mail, and I'll be
5 brief. Let me just — in terms of the volume of GOK decisions,
6 as Your Honor sees, the first column on the chart that Mr.
7 Burrows has referred to are the NKAZ decisions. The remaining
8 three columns involve a litany of decisions on the GOK side.

9 And the GOK comity motion is predicated upon the
10 existence of all of these decisions as well as the pendency of
11 other proceedings in Russia. And there's really three
12 components to the plaintiff's GOK claim. The first, and the
13 heart of the plaintiff's GOK claim, is that GOK was somehow
14 illegally seized through a sham Russian bankruptcy proceeding.

15 Well, Your Honor, that argument — that precise
16 argument — has already been rejected by multiple levels of
17 Russian courts, by the Federal Service of the Russian
18 Federation on Insolvency and Bankruptcy, and by the Department
19 of the Interior for the Sverdlosk region.

20 And it's not surprising that these various courts and
21 agencies have made that conclusion, because the plaintiffs' own
22 papers indicate that GOK was, in fact, on the verge of
23 bankruptcy at the end of 1998. It is therefore not so
24 surprising that a year later GOK filed for bankruptcy.

25 The GOK bankruptcy proceedings themselves have been

1 the subject of numerous proceedings and numerous challenges.
2 And some of those proceedings are very instructive, and by way
3 of illustration only, take the case of Polyprom.

4 Polyprom claims that their claim was inappropriately
5 rejected in the context of the bankruptcy proceeding. Well, in
6 the plaintiffs' own papers they indicated that they themselves
7 chose not to file that claim because they had assumed that the
8 GOK bankruptcy was going to be dismissed. The fault lies in
9 themselves, not in the [indiscernible] but in themselves.

10 When the case then went up to the Sverdlosk arbitrage
11 courts, the plaintiffs themselves, Polyprom, chose not to
12 provide the court with the documents that the court requested.
13 The claim was therefore, not surprisingly, rejected by the
14 court.

15 Every phase of the GOK bankruptcy proceeding fits
16 into that same pattern of having been litigated and re-
17 litigated in Russia, and certainly the litany of cases from
18 Finanz, to Cunard, to Victrix, all make it clear that comity is
19 appropriate under those circumstances.

20 The second component of the GOK comity claim is that
21 the plaintiffs claim that the takeover was produced as a result
22 of an illegal board of directors meeting, and an attempt to
23 stop a GOK shareholders meeting — has already been litigated
24 in the Russian courts.

25 The charts that have been submitted to the Court this

1 morning by the plaintiffs make no reference to dozens of
2 decisions in which the Russian courts have already addressed
3 the propriety of the claims made by the plaintiffs in their
4 complaint that the GOK board of directors meeting held on
5 January 28th was invalid — that's of 2000 — and that somehow
6 the shareholders were prevented from conducting an appropriate
7 meeting on March 4th, 2000.

8 Again, both of those issues were ruled upon over and
9 over again by the Russian courts, and in a number of those
10 decisions, the courts specifically rejected claims that had
11 been brought by various of the plaintiffs and their agents on
12 the grounds that they brought the cases in the wrong courts.

13 Well, that's exactly what they've done here again, so
14 again, that's the second component, is these issues relating to
15 the corporate governance, the propriety of board of directors'
16 meetings, and propriety of shareholders' meetings — again,
17 issues that are properly left for the Russian courts to
18 resolve.

19 The third component of the plaintiffs — of the GOK
20 comity claim relates to the pendency of various shareholder
21 litigations in Russia. And again, if you go back to the second
22 amended complaint filed by the plaintiffs, they say that the
23 shareholder lawsuits were preceded by an illegal change in
24 Gok's registrar.

25 Among other things, the plaintiffs claim that they

1 never received notice of that. Well, we've already
2 demonstrated that they did receive notice. And we demonstrated
3 that because we read the Russian court decisions that had been
4 issued in proceedings brought by Davis, and Foston, and Holdex,
5 and Omni. Three levels of Russian courts have already rejected
6 the claims brought by these same plaintiffs that the registrar
7 change was somehow inappropriate.

8 In the meantime, litigation has been commenced in
9 Russia with respect to Omni, Foston, and Holdex. Those
10 litigations remain pending. Plaintiffs' charts submitted this
11 morning indicate that as recently as last week there was a
12 development in one of those cases.

13 And it is the GOK defendants' position that this
14 Court should not only recognize the existence and the decisions
15 that have been reached in all of the cases on the chart here,
16 but also should defer to the pendency of those proceedings in
17 which the plaintiffs have actively litigated their rights in
18 Russia.

19 Your Honor, there — the chart that was attached to
20 the GOK defendants' reply brief cited the more than one hundred
21 laws that are implicated by the — by the plaintiffs' claim
22 against GOK. Over — I'm sorry, nearly one hundred judges —
23 ninety eight, to be exact — in Russia have ruled upon these
24 claims.

25 In view of all of those decisions, in view of all of

1 those laws, in view of all of the pendency of the proceedings
2 that are pending, we submit that the GOK defendants' motion for
3 comity should be granted.

4 THE COURT: All right. Thank you. I'll take five
5 minutes, and then we'll sit until one thirty. Okay.

6 (The Court takes a brief recess)

7 (The Court resumes in session)

8 THE CLERK: All rise.

9 THE COURT: All right. Good afternoon, all. Please
10 be seated. All right, Mr. Bernard.

11 MR. BERNARD: Good afternoon, Your Honor. James
12 Bernard, from Stroock & Stroock & Lavan, on behalf of the
13 aluminum plaintiffs.

14 Your Honor, I'm going to be handling the legal
15 arguments on — the U.S. legal arguments, that is — in
16 connection with the forum non and comity points that were
17 raised by counsel. Mr. Marks is going to handle certain
18 Russian legal issues that were addressed in their arguments, as
19 well as certain issues relating to the underlying facts of the
20 various proceedings.

21 Your Honor, Mr. Burrows started his presentation by
22 characterizing this complaint as sensationalism and by
23 referring to allegations of murder and corruption as romantic.
24 I submit, Your Honor, that on this record there is nothing
25 sensational and nothing romantic about what happened.

1 What is incredible about this record is the evidence
2 that the plaintiffs in this case have submitted by individuals
3 who are willing to come forward and testify as to specific
4 threats of violence, threats of murder, bribes that were paid,
5 corruption of court proceedings, and to do so under oath. What
6 is incredible is the lack of any factual submission in reply
7 rebutting or refuting those allegations.

8 Time and time again, the declarants that we submitted
9 declarations from in this case have testified to threats of
10 corruption, threats of extortion, threats of murder, by the
11 individual defendants in this case, defendant Chernoi,
12 defendant Makhmudov, and defendant Deripaska. These
13 allegations are set forth in our declarations from Mr.
14 Khaidarov, from Mr. Traum, from Mr. Chivilo.

15 And in response, and in reply, although they could
16 have submitted a declaration saying we never said those things,
17 we never corrupted these proceedings, there is not a single
18 factual affidavit in reply in this record denying our core
19 allegations of corruption.

20 Your Honor, we have also alleged in our complaint
21 that bribes to — to bribe the judges in the specific — excuse
22 me, the governors in the specific regions where these
23 proceedings took place emanated from the United States by
24 defendants Pan-American, defendants Blonde Management, both of
25 whom are managed by defendant Kislin.

1 All of those companies and Mr. Kislin are U.S.
2 citizens and entities. Mr. Kislin resides in New York. Blonde
3 Management is a New York corporation. There is not a single
4 declaration from any of those defendants denying those
5 allegations.

6 It would have been a simple matter, I submit, Your
7 Honor, to submit a declaration that says we never wired those
8 products, we never made those threats, we never participated in
9 those actions. But that is not in this record.

10 THE COURT: But —

11 MR. BERNARD: Now, —

12 THE COURT: — if they had done that, then you would
13 have said that there are issues of fact that can't be resolved
14 on the motions that are before me.

15 MR. BERNARD: Your Honor, that's what we would have
16 said, except that the point here is that in connection with the
17 forum non analysis, and in connection with determining the
18 adequacy of the alternative forum, what Your Honor is left with
19 is a determination under Leon and the balancing inquiry that
20 needs to be made of have we made a specific showing, a serious
21 showing, as Judge Newman articulated it in Leon, of corruption.

22 We submit we have done that. And then the burden
23 shifts back to them to refute those allegations. That burden
24 shifting here, Your Honor, we submit, as I'll address in more
25 detail when I get to the — that particular section of the

1 forum non analysis — has not been met by them.

2 THE COURT: Judge — when you say Judge Newman, that
3 was his concurring opinion for another Court of Appeals.

4 MR. BERNARD: It was his — it was his opinion that
5 he authored, Your Honor, yes, in the Eleventh Circuit in Leon.
6 This was a decision in the Eleventh Circuit, Your Honor,
7 adopting the Eastman Kodak court's reasoning, which I would
8 point out, by the way, the case that defendants cite, Abduahlli
9 by Judge Pauley recently — Judge Pauley adopted the Leon
10 analysis as well.

11 And even more recently than that, in the Second
12 Circuit's affirmance of Judge Mukasey's decision in Aguinda,
13 the Second Circuit references Leon in a footnote. I would not
14 go so far as to say that the Second Circuit, by doing that,
15 adopted Leon, but it is an indication nonetheless that the
16 court is aware and that the court has — had seen the decision.

17 But Your Honor, let me turn exactly to that point in
18 connection with what standard we think ought to be applied on
19 the forum non conveniens motion, because we argue in our
20 briefs, and Your Honor asked questions, about the appropriate
21 standard.

22 And as we set forth there, we believe —

23 THE COURT: Before we get to the —

24 MR. BERNARD: Yeah.

25 THE COURT: — to the standard, let me — do you

1 still believe that I have to reach the question of jurisdiction
2 first before the issue of forum non conveniens?

3 MR. BERNARD: No, I don't, Your Honor, and let me
4 tell you why. There is a recent Second Circuit decision that
5 defendants' counsel referred to at 311 F. 3d 488.

6 THE COURT: Very good.

7 MR. BERNARD: Your Honor is ahead of me. Yes. And
8 the Second Circuit analyzing Steelco there did ultimately reach
9 a different conclusion. I might disagree with that, but I
10 think for purposes of this proceeding it is what it is.

11 Moving on, Your Honor, we believe that the
12 appropriate standard on the forum non motion should be a
13 summary judgment standard, and the reason is Your Honor
14 indicated that it is typical for courts on a forum non
15 conveniens motion, when addressing the adequacy of the
16 alternative forum, to consider material outside the pleadings
17 and to weigh the different evidence.

18 Here, Your Honor, there's a critical difference
19 between that typical case and this case. In those cases, what
20 the court is generally doing is trying to determine is there
21 access to proof in the foreign country, is there available
22 remedies in the foreign country.

23 But here, Your Honor, much like the Second Circuit
24 has held in connection with personal jurisdiction analysis and
25 what they refer to as the intertwined doctrine, where the

1 merits of the case are tied up with the question of adequacy,
2 we submit that the only proper — the only proper burden to —
3 or the only proper standard to apply is summary judgment.

4 THE COURT: Why is that — why is that right? First,
5 there are appellate remedies in the bankruptcy court system in
6 Russia going all the way up to the Supreme Bankruptcy Court —
7 Supreme Arbitrage Ct. And second, there are other courts that
8 would be available to hear a claim of fraud.

9 As to those courts, there is no specific showing of
10 corruption, and I would not have to reach the issues of is
11 there an issue of fact as to whether the two initial bankruptcy
12 courts' decisions were tainted by corruption.

13 MR. BERNARD: Let me answer both — both points, Your
14 Honor. With respect to the — the availability of appeals and
15 what exists in Russia, Mr. Marks is going to address those
16 points, so I'd like to focus instead on the second.

17 And I submit, Your Honor, that the answer is this: on
18 this record, without the benefit of any discovery, what we have
19 been able to demonstrate to the Court about instances of
20 specific corruption, about instances of the defendants'
21 abilities to corrupt proceedings, extends beyond simply the two
22 courts in which we have already — or the multiple courts in
23 which we have already litigated, Your Honor.

24 I think that without the benefit of any discovery
25 from these defendants in connection with their — in connection

1 with their ability to influence proceedings in other arenas, in
2 other forums, it would be improper to simply hold at this stage
3 of the case that because we have only shown corruption in one
4 or two forums that we — that we cannot show corruption or the
5 ability to corrupt in other forums.

6 THE COURT: Well, that would — if that were true, as
7 the — the magistrate judge in the prior decision in this case
8 pointed out, it would always be possible to point to some
9 specific instances in any court system where there has been a
10 — an appalling situation — any court system in any court in
11 the world — in any country in the world.

12 And to say that because we have shown, allegedly
13 shown, in two bankruptcy courts reasonably far away from Moscow
14 that, in fact, no fair trial could be held anywhere in the
15 country in Russia would appear to be a leap.

16 MR. BERNARD: Your Honor, I submit that on this
17 record it's not a leap, and let me answer specifically the
18 point about the United States and your example. Let me try to
19 explain it.

20 Your Honor, there is a qualitative and a quantitative
21 difference between the type of corruption that we've been able
22 to establish on this record and the isolated instances of
23 corruption that may take place in a forum like the United
24 States, and that has to count for something.

25 It's not just simply a matter of a corrupt judge in

1 Brooklyn taking a bribe on one or two occasions. It's a matter
2 of a system-wide problem that we have demonstrated, which is
3 what I would characterize as a susceptibility to corruption, a
4 general corruption problem, and the specific ability of these
5 defendants to manipulate proceedings in Russia based on that
6 general problem.

7 I submit that it's not a leap to say that from the
8 evidence in this record these defendants are not capable of
9 doing much more than we've been able to establish, Your Honor,
10 without any discovery whatsoever.

11 We have gathered this evidence. These people have
12 come forward. Without giving us any opportunity to examine the
13 defendants' books and records, their wire records, to
14 determine, for example, whether bribes were paid to other
15 individuals than the government — as we've established a good
16 faith basis for in this record.

17 We have declarations from individuals, Your Honor,
18 who say that the defendants told them specifically that they
19 were going to corrupt proceedings against us. We have a
20 declaration from one individual, Your Honor, were defendant
21 Makhmudov says we control the legal system.

22 It's not, Your Honor — and I understand Your Honor's
23 concern, and maybe Your Honor's —

24 THE COURT: Well, it's not only my concern. The
25 tenor of what the Court of Appeals said most recently in the —

1 in the — in the Monde arbitration was much the same, and —

2 MR. BERNARD: Your Honor, if I can, because I can
3 distinguish the case in an important way, I think going back to
4 this point about general and specific corruption, it's a very
5 important point.

6 What almost all of the forum non conveniens cases
7 dealing with allegations of corruption [indiscernible] are just
8 simply allegations of what I would refer to as general
9 corruption. Your Honor, we're here in the United States.
10 There are these reports and other things out there that say
11 that a foreign forum is — is — has problems of corruption,
12 and we shouldn't be allowed to go there.

13 But this case is different, and the only case that I
14 know of that's similar to this one factually is Eastman Kodak,
15 because what makes this case different is that we claim, Your
16 Honor — and we've been able to establish, again, without the
17 benefit of any discovery, that these defendants have already
18 corrupted proceedings involving these claims against these
19 plaintiffs to the forum that they seek dismissal to.

20 That's a different — that's a different character to
21 the nature of the claim than the kind that you see in these
22 other cases.

23 THE COURT: But why would it follow that a court
24 system can be systemically indicted because of allegations,
25 whatever their strength are, with respect to the bankruptcy

1 courts in two districts? And you can correct me if I'm wrong,
2 but there are no specific affidavits or evidence to suggest
3 that the courts in Moscow have been affected, or at least the
4 — the affidavits before me — again, you can correct me if I'm
5 wrong and point me to the affidavits — or the Supreme
6 Bankruptcy Court.

7 MR. BERNARD: Your Honor, there is information in the
8 record — there are affidavits in the record that Mr. Marks
9 will address with respect to allegations of corruption and
10 evidence of corruption beyond those two proceedings, or beyond
11 those two forums, and I'll let him do that.

12 And I'll also, Your Honor, note that with respect to
13 the ability of an appeal to the Supreme Arbitrage Court, that's
14 another matter that we will address shortly.

15 But I want to return, I think, to the more
16 fundamental premise, and that is that I think it is hard for a
17 U.S. court sitting here, where we have, fortunately, a system
18 where these kinds of things are so far-fetched as to seem
19 unbelievable — the notion that an appellate court could
20 possibly be corrupt, that appellate judges could possibly be
21 corrupted.

22 But Your Honor, on the evidence that we've submitted
23 already, I just return to the point that I think at this stage,
24 without any discovery, we're entitled to a benefit that at
25 least, Your Honor, the kind of discovery that we sought earlier

1 on in the case that we have not been able to obtain that we be
2 able to obtain.

3 And then this — and then the discussion about
4 whether or not the defendants are able to do what I submit they
5 are able to do can occur on a full record. And that's
6 precisely the point I was making, Your Honor, with respect to
7 the summary judgment standard, is that analyzing the adequacy
8 of the alternative forum at this stage, without the benefit of
9 any of that discovery, would be unfair to us, unfair to the
10 plaintiffs, without applying that standard.

11 Your Honor, I think that we've addressed this point.
12 If I may, —

13 THE COURT: Okay, could I just — and maybe Mr. Marks
14 will address this specifically. Can you — no, when he gets
15 up, but the same point that I addressed with defendants, which
16 is if this case were brought as a fraud case in Russia, where
17 would it — what courts — he — okay.

18 MR. BERNARD: Mr. Marks will be addressing —

19 THE COURT: All right.

20 MR. BERNARD: Unfortunately, Your Honor, my knowledge
21 of Russian law does not extend as far.

22 THE COURT: Okay.

23 MR. BERNARD: Let me turn to the — to the argument
24 about deference, Your Honor, that should be afforded to
25 plaintiffs. Your Honor asked a number of questions about that.

1 Iragorri establishes the point that there is an
2 assumption that the plaintiff's choice of forum will stand and
3 should rarely be disturbed, and that the degree of that
4 deference increases where U.S. plaintiffs are involved.

5 Mr. Burrows contends that that should not be the case
6 here, because some of the U.S. plaintiffs, in his view, are
7 what he refers to as shell companies. Let me answer those —
8 those points.

9 These plaintiffs are legitimate businesses in the
10 United States who were established long before this lawsuit was
11 brought, or before this lawsuit was brought, and they undertake
12 all the duties and the obligations of any other corporation in
13 the United States. They pay taxes. They subject themselves to
14 the jurisdiction of the court. They do all of the things that
15 companies in the United States do.

16 THE COURT: Is all of —

17 MR. BERNARD: There is no —

18 THE COURT: Is all of that in the record in their
19 affidavits?

20 MR. BERNARD: It is not in their affidavits, no.
21 They're not — is not, Your Honor.

22 THE COURT: Would you be prepared to submit
23 affidavits from Davis, Holdex, and Nexis as to who their
24 officers, directors, shareholders, and operations in the United
25 States are, where they're — where they have offices, what

1 | their business —

2 | MR. BERNARD: Yes.

3 | THE COURT: — is in the United States?

4 | MR. BERNARD: Yes, Your Honor. We would supplement
5 | the record for that.

6 | THE COURT: All right.

7 | MR. BERNARD: Even in the absence of that, Your
8 | Honor, for present purposes, based on this record, Mr.
9 | Burrows's point seems to be that because these individuals —
10 | because these companies are owned by Israelis or other citizens
11 | overseas that for purposes of the forum non conveniens analysis
12 | —

13 | THE COURT: Oh, by the way, when I — when I ask for
14 | officers — whether you would be prepared — officers,
15 | directors, shareholders — I also intended by that to encompass
16 | what — what citizenship these people have.

17 | MR. BERNARD: Yes. I don't — Mr. Marks?

18 | MR. MARKS: Yes, Your Honor. I don't see a problem
19 | with that.

20 | MR. BERNARD: The reason that I asked, Your Honor, is
21 | just — just to let you [indiscernible] we don't — I
22 | technically do not represent those plaintiffs, so that's why
23 | [indiscernible].

24 | Your Honor, even if you look to the citizenship of
25 | some of these individuals, the way that Mr. Burrows is

1 suggesting — he's pointed, for example, to Israel; he's
2 pointed, for example, to Russia with respect to Mr. Chivilo in
3 connection with the aluminum plaintiffs — there is a doctrine
4 that the Second Circuit enunciated in the Blanco opinion which
5 says — and I'll quote:

6 "We have ruled, however, that when a treaty with a
7 foreign nation accords its nationals access to our
8 courts equivalent to that provided American citizens,
9 identical forum non conveniens standards must be
10 applied to such nationals by American courts."

11 In other words, where there is a treaty of cooperation, of
12 friendship, that in those instances, even though the foreign
13 nationals are foreigners, they ought to be accorded the same
14 deference that a U.S. plaintiff is accorded.

15 And Your Honor, we've gathered treaties with respect
16 to this type of relationship between the United States and
17 other countries for both Russia, Israel, of course the United
18 Kingdom, and also Switzerland. And I'll hand those up and pass
19 that out to counsel.

20 THE COURT: Okay.

21 MR. BERNARD: With respect to Mr. Chivilo, Your
22 Honor, and the argument in connection with the aluminum
23 plaintiffs, there's another point that I wanted to add. As we
24 demonstrated in our declarations, in both Mr. Chivilo's first
25 and second declaration — and I should add that Mr. Chivilo

1 right now resides in France after having fled Russia on false
2 criminal charges — this is in the record.

3 THE COURT: Well, it's —

4 MR. BERNARD: The —

5 THE COURT: You say it's in the record. Mr. Chivilo
6 says that they were false. There is a — there's a prosecutor
7 who's brought a charge against him in Russia, and that's
8 pending.

9 MR. BERNARD: That's correct.

10 THE COURT: I couldn't possibly make a determination
11 on this record that the charge is a false charge, could I?

12 MR. BERNARD: There are two points, Your Honor. One
13 is — no, there are two points. One is — is that Mr. Chivilo
14 sets forth in his declaration that these charges were brought
15 against him by the defendants, and he sets forth in some detail
16 the nature of how that was done.

17 What there is an absence of in the record is anything
18 from the defendants denying those claims.

19 THE COURT: But there — but there is a — there's a
20 prosecutorial decision subjecting him to the possibility of
21 criminal penalties in Russia which he has chosen not to go to
22 Russia to defend.

23 MR. BERNARD: That's correct. Actually, Your Honor,
24 the French courts refused to extradite him. And the point here
25 regardless of the reason is, as Your Honor pointed out, that

1 Mr. Chivilo cannot return, will not return, to Russia because
2 of the threats, because of the things that are in the record,
3 that are not contradicted.

4 So at the end of the day, if the aluminum plaintiffs
5 are deemed to be Russian plaintiffs, Russia is not a place that
6 Mr. Chivilo or that any one of the other declarants who we've
7 submitted declarations from, who talk about the threats, who
8 describe in great detail the false claims that were charged —
9 that were filed against them — none of those people can return
10 to Russia.

11 And that — that is simply the — the point that I
12 wanted to make in connection with the aluminum plaintiffs, and
13 their alleged relationship with Mr. Chivilo.

14 THE COURT: Isn't —

15 MR. BERNARD: Now, —

16 THE COURT: Isn't that — isn't that somewhat similar
17 to Red Rock, that the — that the defendants rely on?

18 MR. BERNARD: Your Honor, I looked at Red Rock, and
19 in Red Rock I think what Your Honor held was that in those
20 instances the corporations had become inactive, and had
21 forfeited their corporate status. There is no similar claim
22 here.

23 THE COURT: No, but I was thinking of the aspect of
24 Red Rock where the individual was, if I'm right, in jail.

25 MR. BERNARD: Um hmm.

1 THE COURT: I mean, so he makes the argument that it
2 would be unfair to him to have the case proceed in another
3 jurisdiction because he couldn't go there. He was in jail
4 here. Similarly, —

5 MR. BERNARD: The difference is, Your Honor — is
6 that he was already incarcerated, whereas here there is a threat
7 of incarceration on false charges. And I think that's the
8 difference that really makes the case different.

9 THE COURT: All right.

10 MR. BERNARD: Moving on, Your Honor, in the forum non
11 analysis, I think we've talked about the point already, so I
12 won't address it in any greater detail, about how Eastman Kodak
13 did adopt a standard, a burden shifting analysis, that Judge
14 Newman in Leon found persuasive, and that other courts have
15 since looked to, as I mentioned, including Judge Pauley.

16 And I think that that ultimately is the standard that
17 should govern this case, and just to repeat it, it is where —
18 where the plaintiff produces significant evidence documenting
19 the partiality, and these conditions are so serious as to call
20 the adequacy of the foreign forum into doubt, then the
21 defendant has the burden to persuade the district court that
22 the facts are otherwise.

23 And I'd like to just spend a minute or two on the
24 defendants' burden and on what's in the record in regards to
25 that, because in addition to the — the various fact affidavits

1 that we've submitted, there are expert declarations in this
2 record, and we have moved to strike two of those expert
3 declarations, and I want to address that briefly.

4 Mr. Marks will address it in greater detail, Your
5 Honor, but with respect to Mr. Zankovsky it is hard to imagine
6 a more incredible set of circumstances than appearing at a
7 deposition to ask questions of an expert witness who's been
8 retained by the defendants, who you discover has written an
9 article that for purposes of these proceedings, as I've said in
10 my sealed declaration, we'll assume to be the — the — the
11 entity GOK, setting forth that the bankruptcy proceedings that
12 effected a change of control with respect to that company were
13 corrupted.

14 This is not our expert. This is their expert who
15 submitted that — who submitted a — who wrote an article
16 published after he was retained in this case. Now, when we
17 tried to question Mr. Zankovsky about that at his deposition,
18 as Your Honor knows from our — from our brief, time and time
19 again we were blocked by claims of confidentiality.

20 We were not permitted to inquire into the basis for
21 his opinion. We were not permitted to inquire into the reasons
22 that he formed a belief as to certain proceedings because —
23 that were corrupted because he said they were confidential. We
24 weren't even able to find out the identity of the proceedings
25 where he had found in the past there were instances of

1 corruption because of this claim of confidentiality.

2 THE COURT: But he opined only on NKAZ, didn't he?

3 MR. BERNARD: He did, Your Honor, but the —

4 THE COURT: And he was — he was retained at a — he
5 was retained initially at the time when GOK wasn't even in the
6 case.

7 MR. BERNARD: That's correct, Your Honor. But Your
8 Honor, there's two important points with respect to his
9 opinion. One is it goes not just to the NKAZ issue, because
10 ultimately what he's opining on, as Your Honor is asking
11 questions about, is the — the relevance between specific
12 corruption and general corruption. And we were actually taking
13 his deposition in connection with this general corruption
14 issue.

15 Instances of specific corruption are directly
16 relevant to general corruption because that's how — that's how
17 — that's how systems become corrupt, Your Honor. They become
18 corrupt based on specific things that happen in specific
19 proceedings. And we weren't able to inquire with respect to
20 any of those matters because of this confidentiality, this
21 claim of confidentiality.

22 Now, there's another important point that — that
23 links the two, Your Honor. We asked Mr. Zankovsky at his
24 deposition assume for a moment that the individuals who are
25 behind the proceeding in connection with GOK are also the

1 individuals behind the proceeding in connection with NKAZ,
2 would that change your opinion. And he refused to answer that
3 question on the grounds of confidentiality.

4 I think, Your Honor, that that highlights the link
5 between the two, that it can't be so — so easily separate to
6 simply say that Mr. Zankovsky was the expert with respect to
7 NKAZ and therefore his opinions in an article concerning GOK
8 are not relevant to this proceeding.

9 Also, in connection with their burden, Your Honor,
10 Professor Stephan — I'm not going to go into at length the
11 various points that have been raised in the briefs on that,
12 except I'll just point this out, Your Honor. I think, as one
13 of the courts in this district said once, that a prestigious
14 resume is not enough. And a sterling resume is not a
15 sufficient basis to be qualified as an expert.

16 What we demonstrated in our moving brief were
17 specific areas in connection with corruption that Professor
18 Stephan had not investigated, had not discussed with people,
19 had not researched.

20 Even more specifically, when we asked him with
21 respect to bankruptcy matters what his background was, this is
22 what he said: I don't desire to put myself in the position of
23 someone who could, without assistance, take a client through
24 the bankruptcy procedure. We asked him whether he had written
25 any articles or any treatises in connection with bankruptcy

1 matters, and he hadn't.

2 Now, I think, Your Honor, that in terms of the
3 balance that Leon requires the Court to engage in, even if Your
4 Honor doesn't strike the declaration, that that lack of
5 background is a factor to consider in determining whether or
6 not the defendants have met their burden, once we've met ours.

7 And then finally, Mr. Burrows mentioned Mr.
8 Petrukhin. We actually did address Professor Petrukhin or Mr.
9 Petrukhin's expert affidavit. Mr. Berger addresses it in his
10 declaration at paragraph one hundred. And the reason why the
11 analysis is brief is because what Professor Petrukhin has to
12 say is brief.

13 He has two paragraphs at the end of his declaration,
14 paragraphs forty two and forty three, where he recites various
15 provisions of Russian law, black letter provisions of Russian
16 law, and based on this he says the forum must be adequate.

17 The Second Circuit in Bridgeway, addressing the
18 declarations that were submitted in a Liberian case, had a
19 similar declaration and said this about it:

20 The first declaration concerns the design of the
21 Liberian judicial system but says nothing about its
22 practice during the period in question.

23 And the Second Circuit refused to give that declaration any
24 weight. I submit the Court should do the same with respect to
25 Professor Petrukhin's declaration.

1 Now, I would also point out, Your Honor, that in our
2 papers we have submitted a document from the fifty percent
3 owner of Russian Aluminum, Sibneft, and that document says a
4 lot about what the defendants have said in the past concerning
5 corruption. It's an offering —

6 THE COURT: Oh, before we leave the —

7 MR. BERNARD: Yes..

8 THE COURT: — the — the experts and all, —

9 MR. BERNARD: Yes.

10 THE COURT: — do you — is it a — is it a fair
11 statement that you do not contest — you don't dispute — that
12 — that there is a — a claim under Russian law that could be
13 brought by the plaintiffs, first, that would be an adequate
14 alternative claim, —

15 MR. BERNARD: Um hmm.

16 THE COURT: — and second, that the procedures in the
17 Russian court system are there to prosecute such a claim, such
18 that the procedures would satisfy the requirements of the forum
19 non conveniens cases for an adequate alternative forum, but you
20 contend that because of corruption, those procedures, otherwise
21 adequate, would not be followed.

22 There is no — to put it another way, it is not
23 because of the absence of a claim that could be brought, or
24 because the absence of procedures that are so deficient that
25 the Russian courts are not an adequate alternative forum.

1 The problem you have with the Russian courts is the
2 allegations of corruption.

3 MR. BERNARD: Your Honor, the ability to bring a
4 claim in Russia is disputed, and the type of claim that can be
5 brought — and again, I'm going to defer to Mr. Marks, who will
6 address those points.

7 THE COURT: Okay.

8 MR. BERNARD: Your Honor, I was — I was drawing
9 attention to the — the Sibneft offering that is in our papers,
10 because there are two statements in there that I think bear on
11 this issue of corruption — and again, in terms of the balance
12 that the Leon court adopted.

13 Sibneft, as I mentioned, is the fifty percent owner
14 of defendant Russian Aluminum, and in the securities offering
15 in the United States had this to say in connection with their
16 risk disclosure statements:

17 Russia has a judiciary which is vulnerable to
18 economic and political influence. In Russia there is
19 no guarantee that a foreign investor will obtain
20 effective redress in a Russian court.

21 Your Honor, this goes back to the point earlier that I made in
22 connection with discovery.

23 We submitted a request to take additional narrow
24 discovery just in connection with this offering. The Court
25 denied that request. I understand that. The point is, Your

1 Honor, that information about how they came to this conclusion,
2 information about specifically what data they reviewed, what
3 analysis was performed, and those kinds of factors that go into
4 making this kind of a statement in a legal document in the
5 United States is relevant to the very question of to what
6 degree are defendants able to influence proceedings.

7 And in connection with the balancing inquiry, I think
8 it's a factor that the Court should consider when we talk about
9 the claims of corruption, when we have set forth evidence in
10 our papers in terms of corruption, because it's not just things
11 that we're saying. It's things that the defendants have said.

12 Now, —

13 THE COURT: Could I —

14 MR. BERNARD: Yeah. Yes, Your Honor.

15 THE COURT: There are a couple of contracts, at
16 least, that — and I raise this because it's relevant to the
17 disclosure in — in an American securities offering. There are
18 a couple of contracts which it struck me are particularly
19 relevant in the papers. One is any contract between Mikom and
20 NKAZ. And another is any contract between Nexis and GOK,
21 because both of those are, at least as I understand it, alleged
22 to have been wrongly abrogated.

23 MR. BERNARD: Um hmm.

24 THE COURT: And there may be more. But are those
25 contracts in the papers themselves somewhere?

1 MR. BERNARD: Your Honor, as I stand here now, I
2 don't believe they are. It —

3 THE COURT: I didn't think so, because one of the
4 issues that's raised by the defendants is that the very
5 contracts at issue may contain forum selection clauses,
6 arbitration clauses, and it may well be useful to put them in
7 the record one way or another, and it raises the issue —
8 plainly, a securities disclosure in the United States is meant
9 to provide potential investors with a fair representation of
10 all of the risks of — of such an investment.

11 At the time that these investments were made, it was
12 another time in Russia. And you can correct me if I'm wrong.
13 Would it not be a fair consideration to say that people — that
14 non-United States citizens investing in Russia at the time
15 would reasonably expect to get what relief was available in
16 Russia?

17 The disclosure that you read from the securities
18 filing says that there could be problems in connection with
19 that relief. But wouldn't that be a factor to be taken into
20 account when the investments here were made, who was making
21 them, and whether there were forum selection clauses in the
22 contracts?

23 MR. BERNARD: Yes, Your Honor. I think it is
24 relevant. As I stand here now, I don't recall the date of the
25 Sibneft offering, and I think that obviously that would — that

1 would be critical.

2 THE COURT: It's very recent, I believe, I thought,
3 because it came up in the course of the briefing of these
4 motions.

5 MR. BERNARD: It — it is, Your Honor. I'll say —
6 I'll say one thing, and then I know that — that Mr. Marks also
7 has something that he wants to say in connection with that.
8 And that is that the time period certainly is relevant; in
9 other words, when was this disclosure made, when did the
10 actions take place here.

11 But this record already, Your Honor, has evidence of
12 corruption going back to the time that the claims that we —
13 that we've brought before you are — that are set forth in the
14 record. In other words, that it's not an isolated instance of
15 corruption or a description of corruption after the fact.

16 It ties in — it links in — to all of the evidence
17 that's not only with respect to these specific defendants, Your
18 Honor, but also with respect to the general evidence of
19 corruption that Professor Berger outlines in his declaration
20 from speeches that the president of Russia has given, et
21 cetera.

22 So I think it's more than just an isolated act. It's
23 part of a continuing —

24 THE COURT: Could I — on a slightly different point,
25 would you agree that in order to find eventually for the

1 plaintiffs in this case, whether it be by the Court or by a
2 jury, the Court would have to find, or the jury would have to
3 find, that the two bankruptcy proceedings in Russia were
4 corrupt?

5 MR. BERNARD: Yes, Your Honor. I think that — that
6 in connection with a RICO claim, part of the element is an
7 enterprise. Part of the predicate acts are mail and wire fraud
8 in furtherance of a scheme to defraud. And therefore, as part
9 of that proof, we would need to show a fraud.

10 THE COURT: All right. And the — the two central
11 frauds in this case are the — alleged to be the NKAZ
12 bankruptcy and the GOK bankruptcy, right?

13 MR. BERNARD: Correct.

14 THE COURT: And would the Court also have to find
15 that the governors of the respective Russian states were
16 involved in those allegedly corrupt bankruptcies?

17 MR. BERNARD: Not by necessity, no, Your Honor. That
18 would be one way of proving it. For example, another way of
19 proving it could be — and again, this goes to the point
20 earlier in connection with our request for discovery — that
21 the external manager of the plant NKAZ, Mr. Chernyshev, who
22 submitted a declaration in this case, acted fraudulently. And
23 that could take place in the absence of a finding of a bribe or
24 some other corruption at that level.

25 And in fact, Your Honor, the evidence in this record,

1 as Mr. Marks will go through, in connection with Mr.
2 Chernyshev's affiliations with the defendants — we have
3 evidence in the record, Your Honor, that Mr. Chernyshev's team
4 that worked with him in connection with this bankruptcy
5 referred to themselves as The Takeover Team. We have evidence
6 in the record, Your Honor, that some of the individuals —

7 THE COURT: When I read that in the papers, I —
8 words have different meanings in different contexts. There are
9 some — there are some law firms in the city who would consider
10 that to be a badge of honor.

11 (Laughter)

12 MR. BERNARD: Your Honor, I think that in the context
13 of this evidence —

14 (Laughter)

15 MR. BERNARD: — that's already in this record, that
16 — that term could have no meaning other than the term that
17 this was an unlawful takeover. And certainly, Your Honor, if
18 it had that meaning, the defendants who submitted a declaration
19 from Mr. Chernyshev in their moving papers could have obtained
20 a declaration from Mr. Chernyshev in their reply papers to
21 address that point, and they didn't.

22 THE COURT: The reason that I — that I — I raise
23 the issue, just so that you're aware — when your papers argue
24 about the number of connections with the United States, the
25 alleged — and the three prior bankruptcies in Russia, the

1 | alleged connections and the history are whatever they are, but
2 | at bottom, in order to prevail, the central allegations that
3 | the plaintiffs must prove are two Russian bankruptcies that
4 | were allegedly corrupted, which in terms of the interests of
5 | Russia and the United States place a — a great weight in — in
6 | Russia.

7 | MR. BERNARD: Your Honor, let me address that,
8 | because it's — it's relevant to the — to the balancing of the
9 | private and public interest factors. And I think — as I said,
10 | I do not dispute that ultimately that is — that is the locus
11 | of the fraud, of that portion of the fraud.

12 | The important point, Your Honor, though, is — is
13 | that in order for that scheme to have been carried out, the
14 | actions that took place in the United States were a necessary
15 | part of it. For example, when the defendants stole the shares
16 | that belonged to the U.S. — that were held by the U.S.
17 | plaintiffs, they could have transferred those shares anywhere
18 | in the world.

19 | They set up four companies in the United States to
20 | receive those shares. Those shares could have been taken and
21 | delivered to virtually any other country in the world, but they
22 | reached out and decided to do that here in the United States.

23 | And by the same token, when the bribes that were paid
24 | that we have alleged in our complaint to the regional
25 | governors, to Mr. Tuleyev and [indiscernible] — when those

1 bribes were paid, they were paid in part from entities here in
2 New York — Blonde Management. Mr. Kislin manages — defendant
3 Kislin manages Blonde Management — and Pan-American, as we've
4 alleged in our complaint.

5 So when Your Honor speaks about the relative — the
6 relative balancing of these factors, on the other side of the
7 equation is a series of predicate acts committed in this
8 country by U.S. defendants that were necessary to carry that
9 scheme out.

10 And ultimately, I guess, Your Honor, the question
11 that has to be applied —

12 THE COURT: But of course, there is no question that
13 all of those U.S. defendants have consented to jurisdiction in
14 Russia, which is not a — which is not a slight concession.

15 MR. BERNARD: I don't know, Your Honor, whether or
16 not it's slight, because part of the answer to that, I think,
17 will ultimately depend — when we are able to determine their
18 affiliations, as we've alleged [indiscernible] defendants, as
19 we've set forth in our pleading, and as I think the evidence —
20 the evidence that we've been able to submit to date already
21 supports, these are not separate and distinct entities existing
22 in the United States as — as corporations independent of the
23 defendants.

24 They're the instrumentality through which the
25 defendants did what they did here. And because of that, Your

1 Honor, I — the reason that I say I don't know if it's slight
2 is, in fact, if they are, as we allege, the alter egos of the
3 defendants, and they are simply operating at the defendants'
4 behest, then going to Russia to litigate these cases is — is
5 — is — is not a — is not a tremendous burden and would —

6 THE COURT: So these are — these are simply shells
7 in the United States which does not — not suggest that their
8 presence gives the United States such an interest here.

9 Admittedly, the United States has an interest in
10 assuring that it is not the locus of a fraud, that its
11 instrumentalities are not used for a fraud, but simply adding
12 up the number of shells in the United States doesn't give a
13 significant shift to the United States any more than to any one
14 of a number of other jurisdictions where companies have been
15 set up.

16 MR. BERNARD: Your Honor, they are alter egos, but
17 they are not necessarily shells. We know already, without
18 having taken any discovery, that Mr. Kislin manages these
19 entities and operations here in New York.

20 I think it would be unfair at this stage of the
21 proceedings, without the benefit of any discovery, to suggest
22 that there is nothing more to it there than that, when what
23 we've already been able to allege suggests that the contrary is
24 true, suggests that, in fact, they are actively managed
25 companies. They are not just simply shells.

1 We know, as we allege in the complaint, that the
2 entities that were set up to receive the stolen shares were set
3 up by defendant Kislin. And again, Your Honor, if we were able
4 to bring to — to get the kind of discovery in connection with
5 those actions, there might be more to it there than just that.

6 Your Honor, I've been up here for a while, and Mr.
7 Marks has quite a bit that, you know, he wants to cover, so I'd
8 like to turn quickly to comity and just address one point,
9 because Your Honor asked about it in connection with the
10 summary judgment standard.

11 I think the key here, Your Honor, is that what we
12 allege is that these judgments were procured by fraud. How can
13 you make a determination in the absence of some factual
14 standard, some factual application, to the evidence that's —
15 an application to the evidence that's here, that — that that
16 took place without applying a summary judgment standard?

17 At the end of the day, the question of whether or not
18 a judgment was procured by fraud is inherently a question of
19 fact. In this — on this record, it is even more troubling
20 because it is a question of fact where we haven't been able to
21 have any discovery with respect to the procurement of those
22 judgments by fraud.

23 And I would add, I guess, Your Honor, that in the
24 restatement [indiscernible] foreign relations [indiscernible]
25 the Second Circuit cites in Dioniro [phonetic], there is a

1 comment that I think speaks to this. It says evidence that the
2 judiciary was dominated by an opposing litigant would support a
3 conclusion that a legal system, not just a court, but a legal
4 system, was one whose judgments are not entitled to
5 recognition.

6 Also, a particular case may disclose such defects as
7 to make the particular judgment not entitled to recognition.
8 That's comment B to section four eighty three of the
9 restatement [indiscernible] foreign relations that's cited in
10 Dioniro.

11 I think that that comment, which elaborates on the
12 provision dealing with procuring by fraud, makes clear that
13 this kind of question could not occur except after an inquiry
14 into the facts surrounding the judgments, the facts surrounding
15 the circumstances of how they were procured. And I submit,
16 Your Honor — and with that, I'll — unless you have any
17 further questions, Your Honor —

18 THE COURT: One last one. I went back and forth with
19 Mr. Burrows over Pavlov. Is there any — is there any case
20 which has found that the Russian — that Russia was not an
21 available alternative forum?

22 MR. BERNARD: Your Honor, I'm not aware of one. I
23 would point out, though, that other than Eastman Kodak, I don't
24 think there is a single case where a party prior to any
25 discovery — and by the way, in Eastman Kodak there was

1 discovery on this issue — I don't think there's any case where
2 a plaintiff has made a showing of corruption like this, of
3 specific corruption.

4 The cases — for instance, Judge Peck's recent
5 opinion that counsel referred to does not involve a claim of
6 corruption, and to the extent that Pavlov involved a claim of
7 corruption, we have annexed to my declaration, Your Honor, the
8 expert affidavit that was submitted in that case. To call it
9 meager is generous.

10 The evidence that was submitted in that case was
11 strictly evidence of the kind of general corruption that courts
12 have found insufficient. But what this case has which is
13 different than any other case but Eastman Kodak, is the
14 evidence of specific corruption.

15 THE COURT: All right.

16 MR. BERNARD: With that, I'll yield to Mr. Marks.

17 THE COURT: Thank you. Mr. Marks?

18 MR. MARKS: Good afternoon, Your Honor. Your Honor,
19 I would begin by addressing some of the questions that you
20 raised with Mr. Burrows. The first issue that Your Honor
21 raised was whether there's a — an opportunity for the
22 plaintiffs to bring a cause of action in Russia for fraud, and
23 in our — in our view, the answer is simply no.

24 The Russian civil code provides no section — and
25 it's a civil law country. The Russian civil code provides for

1 no cause of action for fraud. And neither Professor Stephan or
2 Mr. Petrukhin, in my reading of their declaration, cite to any
3 provision of the Russian civil code which would so do that.

4 It's not a common law country. It's a civil law
5 country. And in order to recover in Russia in a civil action,
6 you would need a provision of the civil code to permit such a
7 cause of action.

8 THE COURT: It would be — their experts do say that
9 you could bring a claim of fraud.

10 MR. MARKS: They say it without any support, Your
11 Honor, to any citation in the Russian civil code that the claim
12 for fraud could be made.

13 It is true that if you have a prosecutor who is
14 willing to bring a criminal action in Russia that you can have
15 a tagalong civil claim for fraud at the same time. That is a
16 world of difference between a litigant having the right to go
17 into a judicial system and bring a claim themselves.

18 THE COURT: Do any of your affidavits say that there
19 is no provision in the Russian civil code for fraud?

20 MR. MARKS: I do not know, Your Honor. But we could
21 supplement the record if this is an issue of importance to the
22 Court.

23 THE COURT: All right. Plainly, the existence of —
24 under P.T. United, the existence of some claim under — under
25 the — under the legal system of the — of the forum is a

1 relevant consideration. It's difficult, is it not, to conceive
2 of a — of a civil system where there is no claim at all that
3 — on the civil side that one party defrauded another?

4 I mean, I realize that in civil code countries you
5 follow the civil code. On the other hand, the civil code in
6 many civil code countries has been broadly construed to allow
7 the kinds of causes of action — and P.T. United was Indonesia.

8 MR. MARKS: Your Honor, if — if — I don't mean to
9 interrupt the Court.

10 THE COURT: No, you weren't interrupting. It's all
11 right.

12 MR. MARKS: And the answer to that, Your Honor,
13 putting aside it is what it is, of course — the answer is it's
14 not difficult to concede that, because what you have to take
15 into account is the way, according to Professor Zankovsky,
16 cases are tried in Russia.

17 Fraud claims are often the result of things that you
18 prove through oral testimony, as opposed to contracts, you
19 know, where you've got the contract and you know what the duty
20 is. This is what the defendants' expert said about how you try
21 cases in Russia, and I'm quoting his declaration, section
22 seventy seven, quote:

23 "The cross examination of witnesses aimed at
24 determining whether evidence presented is truthful
25 simply does not exist in Russian law. Indeed,

1 Russian arbitrage courts have no authority to summon
2 witnesses either on their own initiative or at the
3 request of the parties."

4 So if Your Honor asked me does it make sense, if
5 there's no claim for fraud in Russia, I would say first, Your
6 Honor, it [indiscernible] it would appear to make sense, given
7 the way that the procedures in Russia work in terms of how
8 cases are tried, and when Your Honor asked Mr. Bernard whether
9 we conceded — or that the procedures in Russia were fair to
10 try a fraud claim, I would cite Your Honor to the Berger
11 declaration.

12 He's our expert, Professor Ethan Berger, who's
13 actually been to courts in Russia, unlike Professor Stephan,
14 who testified he's only been to Russia once in the last six
15 years, solely at the request of the defendants to meet them,
16 and in his entire life he had never been in a Russian court.

17 But our position is you could — it would be
18 inconceivable to try a fraud claim, let alone this fraud claim,
19 if you can't cross examine witnesses, and you can't compel them
20 to testify. There's another instrumental —

21 THE COURT: But doesn't —

22 MR. MARKS: I'm sorry, Your Honor.

23 THE COURT: Maybe — this goes back to the dialogue
24 that I had with Mr. — with Mr. Burrows earlier. The quote
25 that you read was what is the available procedure in a Russian

1 | arbitration court.

2 | MR. MARKS: Yes, Your Honor.

3 | THE COURT: The procedures — the regular procedures
4 | in an American bankruptcy court are — are different, though
5 | there are procedures for adversary proceedings in a bankruptcy
6 | court, but the normal way in which a bankruptcy proceeding is
7 | done is different from a regular civil court action, and my
8 | question would be whether the description of procedures in the
9 | Russian bankruptcy court applies, for example, to a Russian
10 | court of general civil jurisdiction.

11 | MR. MARKS: I'd be happy to answer that, Your Honor.
12 | The answer is, first, I think — and it's — it's in the Berger
13 | declaration, I believe — there's two types of courts in
14 | Russia. There's courts of general jurisdiction, which
15 | generally deal with claim between individuals. And then
16 | there's the arbitration courts that deal with claims regarding
17 | commercial entities.

18 | There is no distinction in the arbitration court
19 | between bankruptcies or other matters. It's not like our court
20 | system where there's — the bankruptcy court for the Southern
21 | District of New York and then there's obviously Your Honor's
22 | court. It is one court that justices — the judges are — are
23 | [indiscernible] and the judges — and it's treated as a regular
24 | commercial matter simply governed by the bankruptcy law, as a
25 | — as a — as opposed to a different law of Russia.

1 The second thing, Your Honor, is that the arbitration
2 procedural code to which we would refer, and which Mr.
3 Zankovsky has so [indiscernible] is describing — that code
4 would apply in the arbitration courts whether the matter was a
5 bankruptcy matter or whether it was a claim for fraud, which
6 unfortunately doesn't exist in Russia.

7 So what he is — is describing is the standard that
8 would apply in any type of commercial case [indiscernible]
9 bankruptcy or not. I would submit to Your Honor that that same
10 standard, because the — the code for the courts of general
11 jurisdiction is essentially a mirror of the arbitration
12 procedural code — that that same problem would exist if you
13 were in a court of general jurisdiction as well.

14 What I would do, to go back to the exchange between
15 Your Honor and Mr. Burrows, is that I would concur with Mr.
16 Burrows in [indiscernible] I think that he said three times,
17 although I'll only agree once, is that if this case were
18 brought in Russia, it would have to go back to the — to the
19 arbitration court that handled the bankruptcy, whether it was the
20 bankruptcy of GOK or whether it was the bankruptcy of NKAZ,
21 because what you would be essentially doing under the Russian
22 code — and we have this footnote [indiscernible] it's — it's
23 — it's in the supplemental materials that we provided to the
24 Court.

25 It's footnote four in the NKAZ litigation binder

1 [indiscernible] what do you [indiscernible] required to do in
2 Russia, Your Honor, in order to bring this — bring a claim of
3 — of corruption is you would have to first collaterally attack
4 the judgments that had been entered.

5 In order to collaterally attack the judgments in the
6 NKAZ bankruptcy and the GOK bankruptcy, Your Honor, you have to
7 bring the claim not only in the same court which rendered the
8 judgment, but in order to collaterally attack those for
9 fraudulent testimony, bribing of — of — of the judges, newly
10 discovered — newly discovered evidence, what you have to do is
11 you have to show that the original decision was obtained
12 wrongfully by showing that there has been a criminal conviction
13 of somebody who was involved in that wrongdoing.

14 So how could we possibly, even if we wanted, bring
15 such — bring such a claim? Because to do so would be to go
16 back to the very courts which we were corrupt — say were
17 corrupted in the first place, and even to open a door we would
18 need the prosecutor to have indicted and convicted these very
19 same people.

20 And in the case, Your Honor, of — of NKAZ, we have
21 two witnesses, Mr. Brayshevyetz [phonetic] and — and I believe
22 Mr. Kuzniaksov [phonetic] who have come forward. These were
23 people who were in the system in Kemerovo for a number of
24 years. These were intimates of Governor Tuleyev. And these
25 people have given declarations, uncontested, under oath, naming

1 four of the judges in the Kemerovo court who actually
2 [indiscernible] actually participated in the NKAZ bankruptcy.
3 So we're [indiscernible] so we're not saying, you know, we
4 think that these people were corrupted because the bribes were
5 paid to Tuleyev.

6 We're saying that we know in other bankruptcy
7 proceedings, based on two eyewitness accounts, that these
8 judges met with people ex parte, took the instructions of
9 Governor Tuleyev, went back to the bench, and rendered
10 decisions accordingly.

11 And neither of those forums could conceivably be
12 adequate to bring a fraud claim which we say doesn't exist
13 under a procedure which doesn't provide for the compulsion of
14 witnesses or cross examination, and ab initio can only be
15 brought after there's prior criminal convictions.

16 THE COURT: All right.

17 MR. MARKS: Just one second, Your Honor. I wanted to
18 go to a second point [indiscernible] is well prepared and well
19 rehearsed [indiscernible] I wanted to first respond to issues
20 that the Court raised.

21 The second issue that Your Honor raised was the issue
22 of corruption in places outside of where we say corruption has
23 — has — has occurred and have been able to demonstrate
24 through specific evidence. In the GOK bankruptcy, all of the
25 courts related to the GOK bankruptcy are located in Sverdlosk.

1 There is a trial level court which is the arbitrage court.
2 There's the first instance of appeal, which is simply an appeal
3 before judges of the same — of the — of the same group of
4 judges.

5 And then the appeals court for that, the Urals Appeal
6 Court, is also located in Sverdlosk, which is the capital of
7 the region of Governor Rusao, who we have submitted the
8 allegations that he received bribes from the defendants.

9 The NKAZ bankruptcy — the first trial level, of
10 course, takes place in Kemerova. The second — the first
11 appeal level, of course, also takes place in Kemerova. And
12 then the appeals go to the appeal court in Tumen. I will tell
13 Your Honor the approach that we — that we took, and I will
14 also tell Your Honor, if it makes a difference, what we can do
15 to supplement the record.

16 We have taken the position on a motion to dismiss,
17 where the allegations of our complaint are to be accepted as
18 true, that we have shown that they have corrupted the courts in
19 Kemerova [indiscernible] they have corrupted the courts in
20 Kemerova, and supported that with extremely specific evidence.

21 We have shown that they have corrupted the courts in
22 Sverdlosk and supported that with our declarations in evidence.
23 And based on that, without any discovery, of course, we have
24 the allegations that the decisions in the court in Tumen would
25 have been corrupted as well.

1 We say that because we have the affidavit of Ethan
2 Berger who has — who — and if — you know, there's the — the
3 Jane Austen model, *Pride and Prejudice*, where it begins it's a
4 truth universally acknowledged that a — that a person — that
5 a wealthy person is in want of a spouse. And if you look at
6 the wealth of information in the Berger affidavit, it's
7 universal that there's general corruption in the Russian
8 courts.

9 You have the U.S. State Department — you have
10 President Putin — you have — you have Russian judges — you
11 have — you have — you have Russian experts — you have
12 Transparency International — every — every entity that has
13 looked at this, people not associated with us, independent
14 people, have concluded that the courts are subject to general
15 jurisdiction — general corruption.

16 The only person who was — who was — who has
17 confounded this in the record is Stephan. He doesn't agree
18 with it. But he hasn't been there.

19 THE COURT: If that — if that were —

20 MR. MARKS: Yeah.

21 THE COURT: If that were right, —

22 MR. MARKS: Yes.

23 THE COURT: — if those general allegations of
24 universally acknowledged corruption in the Russian court system
25 were adequate, there could never be a case that a forum non

1 conveniens motion would not be granted to keep a case here
2 rather than in Russia, and your partner or former partner's
3 motion in Guernsey would have been wrong.

4 MR. MARKS: The — the — the issue is not quite that
5 simple. And the reason that I say that — not that I was
6 always agreeing with my former partners [indiscernible] he
7 didn't give an affidavit that the system — the — there was no
8 issue of — of — of corruption. He was simply setting forth
9 what the Russian law was that had to deal with an issue of
10 exclusive jurisdiction.

11 However, Your Honor, the distinction — and it's an
12 enormously important distinction — is that the system is
13 corruptable when you have people with powerful interests. If
14 there are people with powerful interests — and if I could
15 borrow Mr. Burrows's chart for Russian Aluminum — I put it up
16 here because I — to some extent proves my point.

17 When you have people who are that powerful and have
18 those type of resources, they can corrupt these people. If
19 it's a case — and it's — it's the case where the magistrate
20 judge just recently issued the opinion returning it to Russia
21 — that was a case of a woman whose husband died and fell off a
22 ship. It was a small ship company that's on the other side of
23 it.

24 One would — there's no reason to believe, whatever
25 the imperfections of the Russian court system are, that that

1 woman would attempt to influence the courts in Kaliningrad, or
2 that the specific defendants in the case, which included an
3 American company, would have attempted to influence —
4 influence the courts in Kaliningrad either.

5 This case is, of course, substantially different
6 because we have powerful interests who are not only capable of
7 influencing the courts. We have affidavit after affidavit
8 after affidavit that they have done so.

9 What I would submit to Your Honor in terms of Tumen
10 where the appeals court is — I believe on this record, and
11 given the inferences to which we're entitled, particularly —
12 there's been no discovery — that your Court can — that the
13 Court can well infer that that court is susceptible to the same
14 type of corruption which we have demonstrated.

15 However, Your Honor, Your Honor doesn't necessarily
16 have to make those inferences in a vacuum, because the court in
17 Tumen is famous in the United States. There is a dispute
18 between B.P. Amoco and the Tumen Oil Company that had to do
19 with the bankruptcies, corrupted, of two Russian oil companies,
20 Nisnivaratos Nefsky Gas [phonetic] and Shornogrady Gas
21 [phonetic] by which the — if you don't want to hear it, I'll
22 —

23 THE COURT: No, no. No, it's all right. It's all
24 right. I was just — I was thinking about the court reporter
25 who transcribes this tape.

1 (Laughter)

2 THE COURT: Go ahead.

3 MR. MARKS: Well, I hope they get it right.

4 THE COURT: It's all right. There's no way — there
5 is no way — there is no way around that. You're not going to
6 spell all of the names, and the reporter will have to do the
7 best they can. It may actually be useful to — for the parties
8 to give a glossary for the court reporter. Thank you.

9 MR. MARKS: The — what — what — in a nutshell,
10 Your Honor, there were corrupted bankruptcies in Tumen. The
11 Tumen Oil Company, based in Tumen, put these companies into
12 bankruptcy. It's the same type of sham, unfortunately, that we
13 say occurred in this case.

14 The difference in that case, Your Honor, was that —
15 is that the Tumen Oil Company that was behind it wanted to
16 obtain export import bank guarantees in purchasing materials
17 from the United States. And B.P. Amoco involved the United
18 States Government. They also involved the U.K. government.
19 And the point that I'm making, Your Honor, is that Secretary
20 Albright herself instructed the export import bank not to make
21 the guarantees until the Tumen Oil Company resolved the issue
22 of its corruption of the bankruptcy proceedings, and that was
23 ultimately settled.

24 What I'm saying to Your Honor — if —

25 THE COURT: That's —

1 MR. MARKS: Yeah.

2 THE COURT: That's not in the record, is it?

3 MR. MARKS: It is not in the record, Your Honor.

4 That — which was — to go back where I was, if Your Honor
5 wanted us to supplement the record on whether courts in Tumen
6 can be corrupted, we could easily do that.

7 THE COURT: Oh, the — the record in the case is, at
8 this point, five boxes. And I think that the — that the
9 record is — that the parties have had ample opportunity to put
10 in what they wish to put in in the record.

11 There is — I have identified about three issues in
12 the record that I saw that needed to be amplified: the
13 plaintiffs who are U.S. companies' directors, shareholders,
14 officers, business in the United States, the contracts of Mikom
15 and Nexis, and if there is another contract that the parties
16 believe is centrally involved in the case, such a contract, and
17 I would need a — some translation, not of the whole contract
18 if it's in Russian, but of any choice of law or forum or
19 arbitration clause.

20 And finally, both sides' submission on — unless
21 either side believes that it's fully indicated in your
22 affidavits already, and I'm perfectly happy to accept that and
23 to look at the specific provisions that I've been cited to —
24 the issue of is there a claim under Russian law the equivalent
25 of RICO, fraud, or whatever, what court or courts could that be

1 brought in, and the — if the parties wish to go into it, the
2 procedures available in those — in those courts.

3 Again, the parties may think that it's — and both
4 sides have cited to me their expert affidavits so far, and I —
5 I'm — you know, if the parties wish to rely upon that, that's
6 fine. But I wanted to give the parties that opportunity. Go
7 ahead, Mr. Marks. I didn't want to interrupt you.

8 MR. MARKS: Fine, Your Honor. I would move over
9 generally to some specific issues that I want to discuss on
10 comity. One more thing I would suggest to Your Honor in terms
11 of Moscow — we don't believe, and we agree with Mr. Burrows,
12 that if there were claims for fraud, which we don't think
13 exist, that they would have to be brought in the Sverdlosk
14 region for GOK and Kemerovo for NKAZ.

15 This is, of course, totally different than the GOK
16 shareholders who have brought claims, because there's never
17 been any resolution against them in Russia in a case in which
18 they were either named or served. In each of their instances
19 — there is four of them — Davis — there's no litigation
20 whatsoever [sic] — whatsoever against Davis.

21 There's no proceedings that have made any findings
22 against Davis in Russia. Under — under typical proceedings of
23 comity, if there's parallel actions, you allow them to go
24 forth.

25 Omni lost its shares when it wasn't even named as a

1 party. Same thing happened to Holdex. You had Russian courts
2 entering orders taking the shares away from these companies
3 without them being parties to the action. And those shares now
4 have ended up with the U.S. companies.

5 There's never — Omni has not participated at all in
6 that litigation, hasn't been served, because it wasn't named.
7 Holdex, when it learned about it, has tried to get that
8 reversed, but there's no — there's no findings against it.

9 In terms of Foston, Your Honor, I raise that as the
10 fourth issue, because that happened in Moscow. And I can also
11 supplement, Your Honor, if — if — if — if — if — if
12 there's a belief in Your Honor that things might be different
13 in Moscow, we have State Department statements that had to do
14 with litigations regarding Lukoil, and MTV. That was the
15 company that was — I can see Your Honor not wanting us to
16 supplement the record, so I will move on to —

17 THE COURT: I have five — I have five boxes. If I
18 have specific questions — and the —

19 MR. MARKS: Sure.

20 THE COURT: — parties were given every opportunity
21 to put in everything, and they put in a great deal on both
22 sides. On Foston, weren't the shares returned to Foston?

23 MR. MARKS: No, Your Honor. They haven't been. Wish
24 — wish that they were, but they — but they haven't. What
25 happened in Foston, Your Honor, is that they were sued in

1 | Moscow [indiscernible] imposter showed up on there behalf,
2 | judgment was entered against them [indiscernible] Moscow court.
3 | The court didn't indicate in its — in its — in its decision
4 | — which is highly unusual, according to our expert, Got
5 | Masheekmanah [phonetic] — another problem for the court
6 | reporter — that — that — who was there for them.

7 | The learned about it. They went — they went to the
8 | appeals court. The appellate court let them do an appeal.
9 | Then fraudulent letters are sent to the appellate court
10 | purportedly on behalf of Masheekmanah and Foston. Foston's
11 | saying they're no longer interested in the appeal, and nothing
12 | happens. They learn about these fraudulent letters. They have
13 | to go back in and say that the letters are fraudulent.

14 | The court finally says well, you know, if you — if
15 | you weren't notified, fine, we will reverse, send it back to
16 | the trial court, and then the trial court says — this is the
17 | justice that Foston got — no, I'm sorry, I didn't have
18 | jurisdiction in the first place, so I'm dismissing this case to
19 | Sverdlosk, but I'm not making my order to return your shares.

20 | So a court entered an order in Moscow without the
21 | party participating, in a matter in which it had no
22 | jurisdiction, but it allowed the effect of the order to
23 | continue.

24 | Foston then was forced to go back to Sverdlosk.
25 | Recently there's been an order that the — that the shares are

1 supposed to be returned, but we have been unable to get —
2 Foston's been unable to get [indiscernible] for any of the —
3 of the court officials to enforce the order, which, of course,
4 is subject to yet another appeal.

5 THE COURT: But —

6 MR. MARKS: But — but — yeah.

7 THE COURT: — the most recent court decision in
8 Russia in connection with the Foston shares was return the
9 Foston shares.

10 MR. MARKS: That was the most recent decision.

11 THE COURT: And —

12 MR. MARKS: But —

13 THE COURT: — that's subject to appeal. I can — I
14 can understand that. But how — how could you argue that that
15 was the subject of corruption when your client prevailed and
16 the decision is now on appeal?

17 MR. MARKS: Well, I — that particular decision with
18 that particular judge, Your Honor, may not have been
19 influenced. Our problem is that the overwhelming number of
20 decisions in which we have been involved have been influenced.

21 And I'll say to Your Honor, because what Your Honor
22 was doing was asking us to bring Your Honor up to date with
23 what happened, is that there's another reason why that decision
24 may have gone the way that it did without significance to the
25 defendants, because at the end of last year there was a

1 shareholders meeting of GOK.

2 The meeting was obviously controlled by the people
3 who took the shares from the GOK plaintiffs. And the meeting
4 ruled that they were going to issue a substantial number of
5 additional GOK shares, which presumably are going to the — to
6 people associated with the defendants.

7 So at this point, there may be no significance on
8 behalf of the defendants to oppose that because whether —
9 whether Foston recovers those shares or not, it has no
10 significance to them controlling the company. And I'll say to
11 you that exact same thing happened, Your Honor, in NKAZ.

12 As you may recall, we alleged that they used the
13 courts' influence to get the judgment on behalf of Kuzbass
14 against NKAZ, so they could put it into the false bankruptcy.
15 And that was done as a result of an agreement between Kuzbass
16 and the defendants. They had a falling out.

17 So what happened? The defendants went in — went to
18 the Tumen appeal court. The appeals court reversed the
19 judgment on behalf of Kuzbass, and nonetheless when we went to
20 try to undo the bankruptcy, even though the very judgment that
21 was the basis for the bankruptcy in NKAZ had been reversed, the
22 court — the court wouldn't do it.

23 Ultimately, what happened in that case — which is
24 not dissimilar to these new issuances of shares — Chernyshev
25 [indiscernible] he recognized false claim after false claim.

1 Some of them — I mean, they're so bad [indiscernible]
2 questions of proof that they're humorous. He's there for four
3 days. He orders a furnace from Sibirsky. They don't need a
4 furnace. They've got furnaces.

5 He doesn't — he issues promissory notes to — to —
6 to support this alleged purchase. The furnace is never
7 delivered. He doesn't pay for the furnace. And now they've
8 got these promissory notes for like twenty million dollars so
9 that they can increase their claims.

10 So in NKAZ, at the end of the day, Chernyshev
11 recognized so many false claims. For Sibirsky, there's the —
12 there's the Flamstead transaction which is — again, it's
13 almost unbelievable. He's supposed to sell aluminum to — to
14 Flamstead. That's — what's what he says in one of his
15 declarations, on behalf of NKAZ.

16 So what does the seller do? The seller gives
17 promissory notes to the buyer. He doesn't deliver the
18 aluminum, and now the buyer has thirty million dollars of
19 claims against the estate.

20 So the point that I'm making, Your Honor, if we look
21 to see what happened in NKAZ with the flip-flopping of the
22 Kuzbass claim, at the end of the day they let Koosback have
23 their judgment, but it didn't mean anything because the
24 settlement agreement provided that there was no payment
25 [indiscernible] it was payment in rubles, without interest, no

1 earlier than twenty years.

2 What would have the difference been if — for — for
3 the Kuzbass judgment whether it would have been thirty million
4 dollars or thirty billion dollars? There's nothing that's
5 going to happen. So in terms of us maybe winning something
6 somewhere [indiscernible] it's — it's — it's so — and it
7 doesn't make a difference here because the control is not
8 effectively in the defendants.

9 Your Honor, I only have one other point to make, and
10 I want to add to what Mr. Bernard said. There's no issue, Your
11 Honor — well, on the GOK shareholders, Your Honor, we don't
12 have to show Mr. Tuleyev was involved. We don't have to show
13 Mr. Rusao was involved. They took our — our — our — our
14 shares through court proceedings where we weren't parties or
15 weren't notified.

16 When we brought claims here in the United States
17 against the people who got them, there's no — we don't have to
18 show that the [indiscernible] that's really the — the
19 [indiscernible] on [indiscernible] in terms of the — the
20 bankruptcies, Your Honor, in terms of the bankruptcies, that's
21 a question of proof.

22 And we would suggest to Your Honor at this stage in
23 the proceedings Your Honor shouldn't dismiss for forum non
24 conveniens before any discovery, to see how we — how we might
25 prove things.

1 Chernyshev — we can take his deposition. Maybe
2 he'll say he was instructed to do everything he — was done by
3 Sibirsky. We'll find the wires that we're trying to get.
4 Maybe we'll find that there are wires that were paid to
5 Chernyshev's bank account at Liechtenstein or Switzerland.

6 We could do the same thing in GOK. In GOK you had a
7 transaction the day after Kozorov became the general director
8 of GOK [indiscernible] borrows fifteen billion dollars from MBM
9 Bank. He pays it to a — to — to — to a company called
10 Sviatagor [phonetic]. Sviatagor guarantees the loan, which is
11 for four days. They don't pay the loan back. Sviatagor gives
12 the money back to MBM Bank. It's a round tripping transaction,
13 okay? So they're [indiscernible] in fact, it doesn't even
14 leave the bank, okay?

15 And in return, GOK issued thirty million — it might
16 have been more — worth of loan notes to — to Sviatagor, which
17 — and it [indiscernible] offshore company from somewhere. We
18 might be able to prove this case, Your Honor, simply by showing
19 that Chernyshev was corrupted, by showing the general director
20 was corrupted, by showing the bankruptcy administrator of — of
21 GOK was corrupted.

22 And these are — these are issues that courts can —
23 in the United States can try every day. These are issues that
24 we can — if we prove that there's money in this guy's pocket,
25 if there's money in this guy's pocket, if we prove — if he

1 admits or he — you know, there's just no basis for him
2 entering [indiscernible] these — these type of transactions
3 [indiscernible] not hard for us to defeat a motion for summary
4 judgment. It's not hard for a jury to figure out.

5 These are questions of proof that in determining a —
6 a — a — a motion to dismiss we would submit that Your Honor
7 [indiscernible] not to [indiscernible] if this is a case that's
8 difficult to try in the United States, this isn't the time to
9 make that decision, particularly when there's so many
10 witnesses, and there's so much evidence that's in the United
11 States.

12 Mr. Kislin is in the United States. Blonde
13 Management is in the United States. Pan-American is in the
14 United States. These four shareholder defendants in the GOK
15 case are in the United States. All these wires went through
16 the United States. We need to get to the United States banks
17 to find out where they went.

18 Most of the defendants aren't even in Russia
19 [indiscernible] we have — we have Cyprus companies. We have
20 Panama companies. And this isn't a difficult place for this
21 four zillion dollar Russian Aluminum company to litigate. They
22 — they've got an office here in New York. Sibirsky Aluminum
23 had a — had an office — office in New York.

24 These — the — the — the — whether Russia has
25 causes of action for fraud here [indiscernible] Your Honor, we

1 do. And these are issues that judges like you and juries here
2 in New York are capable of understanding and making decisions
3 on a day-to-day basis. Your Honor, I appreciate your time. If
4 you have anything more, I'm here. But other than that, I would
5 simply thank the Court for considering our position.

6 THE COURT: All right. Thank you, Mr. Marks. I will
7 take the motion under submission, and — or motions under
8 submission.

9 I appreciate the — the speed with which you got me
10 the charts and maps in preparation for the argument. I found
11 them helpful. And it seems to me that since I've invited some
12 specific responses which are not very lengthy, the parties can
13 get me, if they wish, any of those responses by this Friday,
14 the 14th, and any replies by the following week, the 21st. And
15 also include, if you can, those disks.

16 And with that, I will take the motion under
17 submission. Yes, Mr. Bernard.

18 MR. BERNARD: Your Honor, I'm sorry. I'm informed by
19 Mr. Marks that in connection with — with trying to get some of
20 the declarations that Your Honor asked we may need more time
21 than with respect to the letter submissions that Your Honor
22 requested.

23 Might we have an additional week or two to try and
24 get those declarations? Or the — or the middle of next week,
25 or the end of next week, Your Honor?

1 THE COURT: Sure. I do want to — how about February
2 19th for submissions by the parties, and February 25 for any
3 replies? All right.

4 MR. BERNARD: Your Honor, also, Mr. Burrows and I
5 spoke about it before the argument — we'll work together on
6 putting together the I-brief information that you asked for in
7 connection with the charts on disk. I don't think either of us
8 have had the opportunity to speak to the company yet, but we'll
9 endeavor to get that to you as soon as we can, hopefully by the
10 19th.

11 THE COURT: Okay. That's great. Thank you very
12 much, all.

13 * * * * *

14 I, KRISTIN M. RUSIN, court approved transcriber, certify that the foregoing
15 is *as correct a transcript as possible, given the defective recording*, from the official
16 electronic sound recording of the proceedings in the above-entitled matter.

17 Transcript is certified original only if signed in green ink.

18

2/11/03 [Signature]

